



## Senate

General Assembly

**File No. 797**

January Session, 2005

Substitute House Bill No. 6729

*Senate, May 24, 2005*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### **AN ACT CONCERNING OUTSIDE LEGAL COUNSEL TO REPRESENT THE OFFICE OF CONSUMER COUNSEL.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16-6a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) The Department of Public Utility Control [is] and the Office of  
4 Consumer Counsel are authorized to participate in proceedings before  
5 agencies of the federal government and the federal courts on matters  
6 affecting utility services rendered or to be rendered in this state.

7 (b) For any proceeding before the Federal Energy Regulatory  
8 Commission, the United States Department of Energy or the United  
9 States Nuclear Regulatory Commission, or appeal thereof, the  
10 Attorney General, upon request of the department, may retain outside  
11 legal counsel in accordance with section 3-125 to participate in such  
12 proceedings on behalf of the department. All reasonable and proper

13 expenses of such outside legal counsel shall be borne by the public  
14 service companies, certified telecommunications providers, electric  
15 suppliers or gas registrants that are affected by the decisions of such  
16 proceedings and shall be paid at such times and in such manner as the  
17 department directs, provided such expenses shall be apportioned in  
18 proportion to the revenues of each affected entity as reported to the  
19 department for purposes of section 16-49 for the most recent period,  
20 and provided further such expenses shall not exceed two hundred fifty  
21 thousand dollars per proceeding, including any appeals thereof, in any  
22 calendar year unless the department finds good cause for exceeding  
23 the limit and the affected entities have an opportunity, after reasonable  
24 notice, to comment on the proposed overage. All such legal expenses  
25 shall be recognized by the department as proper business expenses of  
26 the affected entities for rate-making purposes, as provided in section  
27 16-19e, if applicable.

28 (c) For any proceeding before the Federal Energy Regulatory  
29 Commission, the United States Department of Energy, the United  
30 States Nuclear Regulatory Commission, the Securities and Exchange  
31 Commission, the Federal Trade Commission, the United States  
32 Department of Justice or the Federal Communications Commission, or  
33 appeal thereof, the Attorney General, upon request of the Office of  
34 Consumer Counsel, may retain outside legal counsel in accordance  
35 with section 3-125 to participate in such proceedings on behalf of the  
36 office, provided the work performed on behalf of the office shall not  
37 include lobbying activities, as defined in 2 USC 1602. All reasonable  
38 and proper expenses of such outside legal counsel shall be borne by  
39 the public service companies, certified telecommunications providers,  
40 electric suppliers or gas registrants that are affected by the decisions of  
41 such proceedings and shall be paid at such times and in such manner  
42 as the office directs, provided such expenses shall be apportioned in  
43 proportion to the revenues of each affected entity as reported to the  
44 department for purposes of section 16-49 for the most recent period,  
45 and provided further such expenses shall not exceed two hundred fifty  
46 thousand dollars, including any appeals thereof, in any calendar year.  
47 The Department of Public Utility Control shall recognize all such legal

- 48 expenses as proper business expenses of the affected entities for rate-  
49 making purposes, as provided in section 16-19e, if applicable.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2005	16-6a

**JUD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Consumer Counsel	CC&PUCF - Cost	Up to 250,000	Up to 250,000
All	Various - Cost	Potential Minimal	Potential Minimal

Note: CC&PUCF=Consumer Counsel and Public Utility Control Fund

#### **Municipal Impact:**

Municipalities	Effect	FY 06 \$	FY 07 \$
All Municipalities	Cost	Potential Minimal	Potential Minimal

### **Explanation**

The bill allows the Office of Consumer Counsel (OCC) to participate in proceedings before federal agencies and federal courts on certain matters. In proceedings before certain federal agencies, the bill allows the OCC to request that the Attorney General (AG) retain outside legal counsel to participate on its behalf. However, the bill limits such expenses to \$250,000 per calendar year. In addition, the bill requires such costs to be apportioned to entities that report to the Department of Public Utility Control for assessments. Under the bill, such costs must be recognized as business expenses for traditional ratemaking purposes. Therefore, utilities would be able to recover such legal expenses in rates. Since the legal expenses are limited to \$250,000 per calendar year, to the extent that such costs could be passed on to the state and municipalities as ratepayers, it would be minimal.

**OLR Bill Analysis**

sHB 6729

**AN ACT CONCERNING OUTSIDE LEGAL COUNSEL TO REPRESENT THE OFFICE OF CONSUMER COUNSEL****SUMMARY:**

This bill allows the Office of Consumer Counsel (OCC), which represents the interests of utility ratepayers, to participate in proceedings before federal agencies and federal courts on matters affecting utility services rendered or to be rendered in the state. The Department of Public Utility Control (DPUC) can already participate in these proceedings.

The bill also allows the OCC to request that the attorney general retain outside legal counsel to participate but not lobby, as defined by federal law, on its behalf in proceedings before relevant federal agencies and appeals of these proceedings. The agencies are: the Federal Energy Regulatory Commission, U.S. Department of Energy, U.S. Nuclear Regulatory Commission, Securities and Exchange Commission, Federal Trade Commission, United States Department of Justice, and Federal Communications Commission. By law, DPUC can request the retention of outside counsel in proceedings before the first three of these agencies.

All reasonable and proper expenses of the outside legal counsel must be borne by the utility companies or other entities under DPUC's jurisdiction affected by the decisions of the proceedings. The costs must be paid when and in the manner OCC directs, and must be apportioned in proportion to the revenue of each affected entity as reported to the department for purposes of its assessments for the most recent period. The costs, including the costs of representation in appeals (apparently for all proceedings), cannot exceed \$250,000 per year. The department must recognize the costs as proper business expenses under traditional utility ratemaking. (Some of the entities affected by this provision are subject to alternative forms of rate regulation; others are not subject to rate regulation by the department.) Similar provisions apply to the retention of outside legal counsel on the department's behalf.

EFFECTIVE DATE: October 1, 2005

## **BACKGROUND**

### ***Lobbying***

Under federal law (2 USC § 1602), lobbying includes, among other things, communicating with a federal official on behalf of a client with regard to (1) the formulation, modification, or adoption of a law, regulation, or policy or (2) the administration of a federal policy or program.

### ***Legislative History***

On March 22, the House referred the bill (File 36) to the Appropriations Committee, which reported it favorably on April 21. On May 11, the House referred the bill to the Judiciary Committee, which reported a substitute adding the lobbying provision on May 16.

## **COMMITTEE ACTION**

### Energy and Technology Committee

Joint Favorable Substitute

Yea 15      Nay 0

### Appropriations Committee

Joint Favorable Report

Yea 32      Nay 17

### Judiciary Committee

Joint Favorable Substitute

Yea 32      Nay 3